IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 205 of 1999

with

SPECIAL CRIMINAL APPLICATION No 206 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

P S VASAVA, ASSISTANT COMMISSIONER OF INCOME TAX

Versus

SHANTABEN W/O MAGANLAL KHANDU BHAI

Appearance:

Mr. B.B. Naik, learned Standing Counsel for Income-tax Department for the petitioner in both the petitions.

Mr. U.A. Trivedi, APP for respondent No.18 - State in both the petitions.

Mr. S.N. Divetia with Mr. S.R. Divetia, learned advocates for respondent Nos.1 to 6 and 13 to 16 in both petitions.

Mr. Y.N. Oza, Senior Advocate with Mr. Amar Bhatt for respondent Nos.7 to 12 in both petitions.

CORAM : MR.JUSTICE A.M.KAPADIA

Date of decision: 15/09/2000

C.A.V. JUDGEMENT

1. In these petitions filed under Articles 226 and 227 of the Constitution of India the petitioner/ original complainant has brought under challenge the common judgment and order dated January 23, 1998 recorded in Criminal Revision Applications No. 15 and 16 of 1997 by the learned Additional Sessions Judge, Surat by which he rejected both the Criminal Revision Applications preferred by the petitioner and confirmed the order dated December 16, 1996 recorded by the learned Chief Judicial Magistrate, Surat, below applications Exhs. 36, 50 and 58 of Criminal Case No. 6185 of 1985 filed by the petitioner. By the said order the learned Chief Judicial Magistrate has rejected the application Ex.50 submitted by the petitioner for examining other witnesses who were cited in the criminal complaint before framing of the charges for providing sufficient material to the court to frame charge for the offences alleged to have been committed by the respondents whereas application Ex.36 submitted by respondent Nos.1 to 6 and 13 to 16 while application Ex.58 submitted by respondent Nos. 7 to 12 for discharging them, came to be allowed and accordingly they were discharged from the charges levelled against them.

2. Before highlighting the controversy posed for determination in this case, it would be relevant to advert few facts relevant to decide the issue involved in these petitions.

2.1. A search operation was carried out at the residential premises of the respondent No.1 on October 11, 1983. The respondent Nos.1 to 6 and 8 to 12, one Mr. R.T. Vankawala, a practicing advocate of Surat and one Mr. Manubhai Desai, Accounts Advisor and Programmer were present at the time of search. When the officers of the Income Tax Department raided the residential premises of respondent No.1 cash amount of Rs.7,71,714/- was found. Alongwith the cash, following documents were also found:

(i) Two agreements to sell dated October 7, 1983 signed by respondent Nos.8 to 12;

(ii) Two kabja receipt dated October 11, 1983 signed by respondent Nos.8 to 12;

(iii) Power of attorney, pass books, pay slips, cheques, etc.

The aforesaid documents were seized under a Panchnama by the officers of the Income Tax Department. Residential

premises of respondent Nos.2 and 13 were also raided by the officers of the Department and from there also drafts, satakhat and kabja receipts were seized. The said search operation was carried out under the provisions of section 132 of the Income Tax Act ('the Act' for short). The statements of respondents and other persons were recorded under the provisions of the Act. During the investigation it revealed that some lands were owned by respondent Nos.1 to 6 as being heirs and legal representatives of deceased Maganlal Khandubhai which were agreed to be sold to respondent Nos. 7 to 12. Respondent Nos. 13 to 16 are the husbands of respondent Nos.2 to 5 respectively and the respondent No.6 is the daughter of respondent No.1. In the agreement to sell the sale price was Rs.30/- per sq.mt. but during investigation it was found that the actual price agreed to be paid was Rs.91/- per sq.yd. and an amount of Rs.21,31,689/- was to be paid in cash being on money which was not to be accounted for. Out of that amount of Rs.21,31,689/- some amount was paid which was deposited in various bank accounts of the respondent Nos.13 to 16 and their children. Rs.7 lakhs and odd were found in cash at the time of search.

2.2. After obtaining necessary permission under section 279 (1) of the Act from the Commissioner of Income Tax and after completing investigation, the department started assessment proceedings and also filed Criminal Complaint in the Court of learned Chief Judicial Magistrate, Surat being Criminal Case No. 6185 of 1985 for commission of the alleged offences under sections 276C and 278 of the Act read with Sections 120 (b) and 34 of the Indian Penal Code ('IPC' for short hereinafter).

2.3. The learned Magistrate issued summons to the respondents as envisaged under Section 244 of the Code of Criminal Procedure ('Code' for short hereinafter) since the offence alleged to have been committed is punishable with imprisonment for a period of more than two years. It may be appreciated that since the complaint filed by the petitioner was otherwise than on police report the Magistrate has to follow the provisions contained in Section 244 of the Code and as per the said provisions before framing of the charge the concerned Magistrate has to record the evidence of the complainant and the witnesses mentioned in the complaint.

2.4. The learned Magistrate, therefore, recorded the oral testimony of the petitioner/original complainant. It may be noted that after the evidence of the complainant was over, respondents No.1 to 6 and 13 to 16

have tendered applications vide Ex.36 for discharging them from the proceedings whereas the petitioner tendered an application vide Ex.50 for examining other witnesses named in the complaint and a separate list was also annexed along with the said application. Same way respondents No.7 to 12 also submitted an application vide Ex.58 for discharging them from the proceedings.

2.5. The learned Magistrate consolidated all the aforesaid applications and after hearing the learned advocates for the petitioner as well as the respondents and on appreciation of the evidence tendered by the petitioner and other relevant documents, recorded common order dated December 16, 1996 by which he has rejected the application Ex.50 tendered by the petitioner for examining witnesses whereas granted the applications Exhs. 36 and 58 and discharged the respondents herein from the charges levelled against them.

2.6. Aggrieved thereby the petitioner has preferred two separate Criminal Revision Applications Nos.15 and 16 of 1998 in the Sessions Court of Surat challenging the common order recorded by the learned Chief Judicial Magistrate, Surat below applications Ex.36, 50 and 58. The learned Additional Sessions Judge on reappreciation and reevaluation of the evidence of the petitioner as well as relevant documents rejected both the Criminal Revision Applications by confirming the order impugned passed by the learned Chief Judicial Magistrate which has given rise to these two Special Criminal Applications which are filed at the instance of the petitioner/ original complainant.

3. Mr. B.B. Naik, learned Additional Central Government Standing Counsel for the petitioner contended that the courts below have erred in coming to the conclusion that the complainant has no cause to prosecute the accused under the provisions of the Act and, therefore, the accused are entitled to be discharged. It was emphatically submitted that departmental proceedings were in progress at the relevant time and the order passed for the assessment proceedings by the lower appellate authority in the case of some of the accused were not final and they were subject to further appeal to the Income Tax Appellate Tribunal and, therefore, the trial court ought to have waited till the departmental proceedings are finally decided by the Tribunal and Revisional Court ought to have considered that question. What was stressed by the learned counsel was that the trial court ought to have allowed the petitioner to examine the witnesses before framing of the charges to

provide sufficient material to the trial court to frame charge against the accused persons. Since it is the right of the complainant to examine witnesses before the trial court to provide sufficient material to trial court to frame charge against the accused persons such right cannot be curtailed by the court by discharging the accused. It was pointed out by the learned counsel that the complainant has examined only himself and was willing to examine other witnesses who have been cited in the complainant and for that purpose an application was also submitted to the trial court to issue summons to those witnesses but since the trial court has not allowed the complainant to examine those witnesses it has resulted into miscarriage of justice. It was also emphasized that had the trial court allowed the application Ex.50 and permitted the petitioner to examine witnesses and thereafter the applications for discharge was considered no prejudice would have been caused to the respondents. It was also emphatically contended that there is no material worth the name to discharge the accused. It was vehemently submitted that both the courts below have committed error of law which is apparent on the face of the judgment and, therefore, the judgment and order passed by both the courts below are contrary to the provisions of the Code as well as the Act which are required to be quashed and set aside by this Court in exercise of powers conferred under Articles 226 and 227 of the Constitution of India.

4. Mr. S.R. Divetia, learned advocate for respondent Nos.1 to 6 and 13 to 16 whereas Mr. Y.N. Oza, learned Senior Counsel for respondent Nos.7 to 12 have made their elaborate submissions. Sum and substance of their submission centers round that no offence is committed by the accused. It was pointed out by them that after recording the evidence of the complainant as envisaged under Section 244 of the Code and considering the assessment orders produced during the proceedings by the respondents which were accepted by the Inspecting Assistant Commissioner of Income Tax (Assessment), Surat on the application tendered by the respondents at Ex.36 and 58 the learned Magistrate thought it fit that no case against the accused has been made out which would warrant their conviction and the learned Magistrate, therefore, discharged them. What was stressed by the learned advocates for the respondents was that after accepting the assessment as well as the settlement proposal by the Income Tax Department, cause of action for continuing the complaint filed under the Act does not survive in view of the settled principles of law enunciated by this Court as well as other High Courts. It was also emphatically

submitted that these Special Criminal Applications came to be filed after delay of 13 months after recording the impugned order by the learned Additional Sessions Judge which cannot be entertained on the ground of delay which has not been satisfactorily explained. Lastly it was emphatically submitted that these petitions are filed under Articles 226 and 227 of the Constitution of India and it is settled proposition of law that powers under Articles 226/227 of the Constitution of India should be exercised sparingly and this Court is not sitting in appeal against the order recorded by the courts below and the jurisdictional sweep of this Court is very limited and only confined to correcting the jurisdictional error and, therefore, they prayed for rejecting both these Special Criminal Applications.

5. It may be appreciated that so far as the criminal prosecution launched by the present petitioner against the respondents was concerned, it was a warrant trial case as it was a complaint instituted otherwise than on a police report as per Section 244 of the Code and, therefore, it was incumbent upon the learned Magistrate to record the evidence of the complainant and witnesses, if any, before framing charge against the accused. As per Section 245 of the Code if upon taking all the evidence referred to in Section 244 of the Code, the Magistrate considers, for reasons to be recorded, that no case against the accused has been made out which, if unrebutted, would warrant his conviction, the Magistrate shall discharge him. Sub-section (2) of Section 245 of the Code provides that nothing in this section shall be deemed to prevent a Magistrate from discharging the accused at any previous stage of the case if, for reasons to be recorded by such Magistrate, he considers the charge to be groundless.

6. In view of the aforesaid statutory provisions of law under the Code, there is no manner of doubt that the Magistrate is empowered to discharge the accused if he finds the charge to be groundless. In sum and substance it was not necessary for the Magistrate to examine all the witnesses cited by the complainant. By virtue of Section 246 of the Code if, when such evidence has been taken, or at any previous stage of the case, the Magistrate is of opinion that there is ground for presuming that the accused has committed an offence triable under the Chapter, which such Magistrate is competent to try and which, in his opinion, could be adequately punished by him, he shall frame in writing a charge against the accused. In sum and substance so far as the complaint filed by the present petitioner is

concerned, the learned Magistrate has to follow the procedures laid down under Sections 244, 245 and 246 of Chapter XIX of the Code.

7. In the backdrop of the aforesaid procedural aspect now let us examine the evidence adduced by the complainant which would fortify his case for framing charge against the accused. The complainant who was examined by the Magistrate for the purpose of framing charge has inter alia testified that it is true that when this case occurred till then no transfer was made and no wealth tax was due on the day of the complaint. He further testified that it is also true that his office had given a decision that accused Nos.1 to 6 and 13 to 16 had no liability of Income Tax and Capital Gains Tax and the Income Tax department has not filed any appeal against that decision and has accepted the decision. He further deposed that no liability of Wealth Tax was raised on accused Nos.1 to 6 and 13 to 16 on the date of occurrence. It is also true that no liability under Income Tax Act had arisen on the date of event of accused Nos.1 to 6 and 13 to 16 is decided in the Income Tax proceedings that accused Nos.1 to 6 and 13 to 16 had no liability in respect of monies of that event. It is also true that the signatures of accused Nos.1 to 6 and 13 to 16 were not on the documents found at the place. The complainant further testified that it is true that the accused Nos.1 to 6 and 13 to 16 had not confirmed the deal by signing any document. According to the complainant, that was a preparation of an offence and thereafter the complainant stated that the offence is attempted. He further deposed that under the Income Tax Laws no liability to pay tax arises till the deal is finalized. The complainant also testified that the Income tax Commissioner has set aside the assessment done by him and the accused Nos.1 to 6 have no liability to pay tax under the Act. Lastly it was stated that Dinubhai and his wife were not present on the day of the event and they were at their home. This is the evidence in respect of accused Nos.1 to 6 and 13 to 16.

8. So far as the evidence against accused Nos. 7 to 12 is concerned, the complainant says that the assessment order of accused Nos. 7 to 12 has been produced vide mark A and as per the said assessment order full amount mentioned in the case has been assessed. Thereafter he has also testified that both the seller and the purchaser have filed Income Tax returns which have been accepted by the department. The sum and substance of the oral testimony of the complainant is that the Income Tax Department has accepted the returns filed by them and

assessed accordingly and against that no appeal or revision is pending.

9. Now let us examine the two assessment orders which have been produced in the proceedings before the learned Chief Judicial Magistrate.

10. On having perusal of the assessment order in respect of accused No.1 Smt. Shantaben Maganlal Naik, which was for the assessment year 1984-85. It is seen that the said order is in respect of search and seizure case of search operations which were conducted on October 11, 1983 at the residence of Smt. Shantaben Maganlal Naik and her son-in-law Shri Dinubhai C. Desai. On having further perusal, it is mentioned that charge in respect of capital gain arising on account of the land transaction in the hands of Smt. Shantaben and her family members is premature in the sense that the land under consideration cannot be said to have been transferred within the meaning of Section 2 (47) of the Act. They were caught when they were still finalizing the matters. Therefore, obviously after intervention of Income tax Department, the assessee has not taken any further steps to finalize the transactions with the concerned parties and the matter stands as it was. So far the transaction in respect of the land has not been taken place between the selling and purchasing parties no further action under the capital gains may be possible in the present state of facts. Finally it was concluded that cash of Rs.7.71 lakhs and the cash of Rs.9.90 lakhs deposited in the bank account of Smt. Shantaben has nothing to do for the assessment year 1984-85 and, therefore, as per the return of income filed by the assessee the assessment has been finalised.

11. So far as the case of respondent Nos.7 to 12 is concerned, they have also placed reliance on the assessment order for the assessment year 1984-85 which was produced before the trial Court vide mark A. On having look at the said document it can be assembled that it is a revised return under the head of "other sources" declaring income of Rs.24,587/- in pursuance to the circular Nos. 432, 439, 440 and 441 of 15.11.1985 and subsequent clarifications thereto. The said return was filed by Damodar Bhimjibhai Patel, respondent No.11. In the said assessment order cases of six timber merchants have been assigned to the Assessment Range with effect from 18.8.1986 by the C.I.T., Surat. Their names are as under:

(1) Shri Damodar Bhimjibhai Patel.

(2) Shri Karsanbhai Samjibhai Patel.
(3) Shri Hansraj Karamshibhai Patel.
(4) Shri Vishrambhai Ramjibhai Patel.
(5) Shri Jethabhai Punjabhai Patel.
(6) Shri Vishrambhai Ramjibhai Patel.

It is further stated therein that the six purchasers had entered into a land transaction with Smt. Shantaben on 10.9.1983 by oral agreement and given Rs.1 lakh for the lands at Majura and Udhna. The details with regard to the accounts and rising of the funds by the aforesaid six respondents are also mentioned in detail. It is further mentioned in the assessment order that the consideration paid to Smt. Shantaben Naik for the land are belonging to the purchasers and the same has been established by necessary evidence placed on record and verified from the books of account. It is also mentioned in the assessment order that while finalising the assessment order in the case of Smt. Shantaben M. Naik for the assessment year 1984-85, it has been held in her case that the seized cash of Rs.7.71 lakhs and the cash of Rs.9.90 lakhs deposited in the bank account of Smt. Shantaben has nothing to do in her case. This fact is evident from the facts narrated in the said assessment order. Lastly it is also seen from the said assessment order that the funds raised by the purchasing parties for the purchase of land has been properly explained and the concerned Inspecting Assessment Commissioner of Income-tax (Assessment) Surat is satisfied with the explanations and evidences produced by the assessee. Therefore, the returns filed by the six purchasing parties under the Amnesty Scheme have been accepted. This is the sum and substance of the evidence adduced and produced before the concerned Magistrate before whom the complaint for the commission of the offence under the Act has been instituted.

12. In the backdrop of the aforesaid evidence, now the questions that fall for consideration of this Court are that:

(1) When the Income Tax Authority has, on proper explanation given by the respondents for the amount which was found during the search, accepted the returns of the respondents under the amnesty scheme and made assessment accordingly, can there be a charge of wilful attempt to evade Income Tax punishable under section 276C and 278 of the Act?

(2) Whether the order recorded by the learned Magistrate and confirmed by the learned Additional

Sessions Judge in exercise of revisional jurisdiction is contrary to the provisions of the Act and the Code?

(3) Whether on the facts and in the circumstances of the cases, the respondents should have been put on trial for wilful attempt to evade Income Tax?

13. To answer the aforesaid first question, reference shall have to be made to the provisions contained in Sections 276C and 278 of the Act. Section 276C of the Act reads as under:

"276C.(1) If a person wilfully attempts in any manner whatsoever to evade any tax, penalty or interest chargeable or imposable under this Act, he shall, without prejudice to any penalty that may be imposable on him under any other provision of this Act, be punishable, --

(i) in a case where the amount sought to be evaded exceeds one hundred thousand rupees, with rigorous imprisonment for a term which shall not be less than six months but which may extend to seven years and with fine;

(ii) in any other case, with rigorous imprisonment for a term which shall not be less than three months but which may extend to three years and with fine.

(2) If a person wilfully attempts in any manner whatsoever to evade the payment of tax, penalty or interest under this Act, he shall, without prejudice to any penalty that may be imposable on him under any other provision of this Act, be punishable with rigorous imprisonment for a term which shall not be less than three months but which may extend to three years and shall, in the discretion of the court, also be liable to fine."

Section 278 of the Act reads as under:

"278. If a person abets or induces in any manner another person to make and deliver an account or a settlement or declaration relating to any income chargeable to tax which is false and which he either knows to be false or does not believe to be true or to commit an offence under sub-section (1) of section 276C, he shall be

punishable,--

(i) in a case where the amount of tax, penalty or interest which would have been evaded, if the declaration, account or statement had been accepted as true, or which is wilfully attempted to be evaded, exceeds one hundred thousand rupees, with rigorous imprisonment for a term which shall not be less than six months but which may extend to seven years and with fine;

(ii) in any other case, with rigorous imprisonment for a term which shall not be less than three months but which may extend to three years and with fine."

A bare reading of the aforesaid provisions contained in section 276C of the Act, it is clear that the provisions contained in the said Section could be attracted only if a person wilfully attempts to evade any tax, penalty or interest chargeable or imposable under the Act and shall be punishable as mentioned in the said Section.

14. In light of the aforesaid statutory provisions of the law, if we examine the case of the respondents, at the cost of repetition, it must be said that the two assessment orders to which we have made reference in detail in earlier paragraphs of this judgment unequivocally suggest that the respondent No.1 has filled in the return for the said year and the same is accepted by the department wherein it is also mentioned that as the transaction in respect of the land has not been taken place between the selling and purchasing parties no further action under capital gain may be possible in the present set of facts. So far as the seized cash of Rs.7.71 lakhs and cash of Rs.9.90 lakhs deposited in the bank account of Smt. Shantaben is concerned, it has nothing to do with the case of the assessee for the assessment year 1984-85. Same way the assessment order in respect of the respondent Nos. 7 to 12 unequivocally goes to show that they were the purchasers of the land and the approximate cost of the land was Rs.28,80,896/and the source of the said amount and the history of transaction with Smt. Shantaben regarding the purchase of the land is enumerated in the said assessment order and, therefore, the assessing officer i.e., Inspecting Assistant Commissioner of Income-Tax (Assessment) Surat has concluded that the fund raised by the purchasing parties for the purchase of the land was properly

explained and he was satisfied with the explanation and the evidence produced by the assessee and, therefore, the return filed by six purchasing parties i.e., respondent Nos. 7 to 12, under amnesty scheme was accepted. If this is the position then how the prosecution can be launched against the respondents? Mr. B.B. Naik, learned advocate for the petitioner was unable to comment on the said two assessment orders. Therefore the submission that notwithstanding the respondents were assessed by the Inspecting Assistant Commissioner of Income-Tax (Assessment) Surat, they can be prosecuted, has no substance and merit.

15. At this stage, it would be advantageous to refer to the case law on this point. Similar question arose before this Court in the case of Alkesh Subodhchandra Shah v. State of Gujarat and another, reported in (1995) 212 ITR 255 (Guj.). In the said case this Court has observed that the amount recovered and the value of the valuable articles had been shown by the assessee as income from undisclosed sources in that financial year and the said position had been duly accepted by the Department and the assessment proceedings had been completed. This position having been accepted by the Department and the income having been accepted as income from undisclosed sources in that financial year under statutory provisions, it could not have been urged by the complainant/department that there was a wilful attempt to evade tax on the part of the petitioner-assessee. It was prima facie shown that no case had been made out against the accused persons.

In the aforesaid decision, this Court has considered following judgments rendered by various High Courts.

(i) D.N. Bhasin v. Union of India (1988) 171 ITR 7 (Punjab & Haryana).
(ii) Parkash Chand v. ITO (1982) 134 ITR 8 (Punjab & Haryana).
(iii) Kanshi Ram Wadhwa v. ITO (1984) 145 ITR 109 (Punjab & Haryana).
(iv) Gopalji Shaw v. ITO (1988) 173 ITR 554 (Calcutta).
(v) Banwarilal Satyanarain v. State of Bihar (1989) 179 ITR 387 (Patna).
(vi) Asst. CIT v. Belco Engineers (P.) Ltd. (1990) 87 CTR 1 (Delhi).
(vii) ITO v. Mohinder Pal Ajay Kumar (1993) 203 ITR 866 (Punjab & Haryana).
(viii) ITO v. B.B. Mittal (1993) 199 ITR 805 (Punjab &

Haryana).

The ratio laid down in the aforesaid case law would go to show that the case of the department against the assessee was in respect of some concealment somewhere which would entitle him to some benefit. Later on, it was found by the higher authorities that such was not a case. Accepting this position these pronouncements would say that when the case of the assessee came to be accepted as a genuine one even later on there could not have been prosecution.

16. Seen in the above context, I am of the opinion that since the returns filed by the respondents herein have been accepted, applying the principles laid down by various High Courts, no prosecution under the Act can be launched against the accused and, therefore, the learned trial Judge has very rightly discharged the accused after careful scrutiny of the oral evidence of the complainant, Mr. P.S. Vasava, Income-Tax Officer (Assessment) Surat.

17. This takes me to the second question which is formulated hereinabove. In this connection, at the cost of repetition it may be stated that this is a case instituted by the complainant against the respondents under Section 244 of Chapter XIX of the Code and, therefore, as per the provisions of the said section, before framing the charge, concerned Magistrate has to record the evidence which may be produced in support of the prosecution case. It can also be seen from Section 245 of the Code that if, upon taking all the evidence referred to in section 244, the Magistrate considers, for reasons to be recorded that no case against the accused has been made out which, if unrebutted, would warrant his conviction, the Magistrate shall discharge him. It is also seen from sub-section (2) of Section 245 of the Code that nothing in this section shall be deemed to prevent a Magistrate from discharging the accused at any previous stage of the case if, for reasons to be recorded by such Magistrate, he considers the charge to be groundless. So far as the instant case is concerned, after recording the oral testimony of the complainant the learned Magistrate has given full-fledged hearing on application Ex.50, which was submitted by the complainant for producing evidence of the witnesses cited in the complaint by tendering the list of witnesses to be examined and applications Exhs.36 and 58 which were submitted by the respective accused for discharging them from the proceedings and after considering the evidence of the complainant and the two assessment orders, recorded the conclusion by rejecting the application Ex.50 and

accepting applications Exhs. 36 and 58. In view of this, it cannot be contended that the learned Magistrate has not followed the provisions contained in the Code and recorded an order at a premature stage. As per the provisions contained in Sections 244 and 245 of the Code the learned Magistrate was duty bound to examine the case of the complainant before framing the charge since the case was instituted otherwise than on police report. Therefore, it cannot be contended that the learned trial Judge has not exercised jurisdiction vested in him.

18. In this connection it would be profitable to refer to the latest pronouncement of the Supreme Court in the case of State of Madhya Pradesh v. Mohanlal Soni, (2000) 6 SCC 338. In the said case the complaint under Section 13 (1) (e) read with Section 13 (2) of the Prevention of Corruption Act, 1988 for the check period 25.9.1982 to 27.3.1993 was served upon the respondent, a public servant, stating that he had acquired the property in excess of the known sources of his income. While submitting the charge-sheet several important documents, which were collected during the course of investigation, were withheld. Most of the documents related to the income tax returns or income tax assessment orders. All these documents pertained to the period prior to 26.3.1993. Some of them even related to the year 1988. At the time of framing charges the respondent made an application seeking production of these documents in court. According to the respondent the said documents supported him. If the documents were considered even prima facie there was no scope to frame charges against him. But the said application was rejected stating that for the purpose of framing charges only the documents forwarded to the court under Section 173 (5) of the Code were required to be considered. The respondent, therefore, filed criminal revision which was allowed by the High Court directing that the documents collected during the investigation be produced and may be taken into consideration by the court below while framing the charge. Thereafter the trial court framed charges under Section 13 (1) (e) read with Section 13 (2) of the Act. Aggrieved by the order framing charges, the respondent filed a criminal revision. The High Court accepted the case of the respondent, set aside the order of the trial court framing charges and discharged the respondent. In the said case the Supreme Court has held that at the stage of framing charge, the court has to prima facie consider whether there is sufficient ground for proceeding against the accused. The court is not required to appreciate evidence to conclude whether the materials produced are sufficient or not for convicting

the accused. If the court is satisfied that a prima facie case is made out for proceeding further then a charge has to be framed. Per contra, if the evidence which the prosecution proposes to produce to prove the guilt of the accused, even if fully accepted before it is challenged by cross-examination or rebutted by the defence evidence, if any, cannot show that the accused committed the particular offence, then the charge can be quashed.

19. It may be noted that the Supreme Court has considered sections 227 and 228 of the Code which are sections relating to Sessions trial and before framing charge by the court of Sessions in a Sessions Trial the court can, if there is sufficient ground for discharging the accused under the Code, discharge the accused after recording reasons for doing so. At the same time, if after such consideration and evaluation of the material and documents on record, the Sessions Judge is of the opinion that there is a ground for presuming that the accused has committed an offence which is exclusively triable by the Court of Sessions, he shall frame, in writing, a charge against the accused. Both the aforesaid exercises have to be done before recording the evidence of the prosecution witnesses. To put it differently, it is well settled that at the Sections 227-228 stage the Court is required to evaluate the material and documents on record with a view to finding out if the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence and if the Court is satisfied that prima facie case is made out for proceeding further then a charge has to be framed. Per contra, if the evidence which the prosecution proposes to produce to prove the guilt of the accused, even if fully accepted before it is challenged by the cross-examination or rebutted by the defence evidence, if any, cannot show that the accused committed the particular offence then the charge can be quashed. Similar provisions are found in sections 245 and 246 of the Code. Therefore, in my view, the judgment of the Apex Court in the case of State of Maharashtra (supra) squarely answers the second question formulated by this Court. The learned trial Judge after considering the statutory provisions contained in sections 245 and 246 of the Code came to the conclusion that there is no evidence worth to connect the accused with the commission of the offence under the Act and, therefore, without waiting for the examination of further witnesses to which prayer was sought for in Ex.50, recorded the conclusion of discharge of the respondents.

20. So far as the 3rd question formulated by this court is concerned, in view of the discussion made in the foregoing paragraphs, the respondents/accused cannot be put on trial for wilful attempt to evade income tax.

21. Seen in the above context, the learned Magistrate has committed no mistake in law or facts in appreciation of the oral evidence as well as two documents i.e., income tax assessment orders produced by the respondents and thereafter recording the conclusion by which he has rejected the application Ex.50 filed by the complainant for examining his witnesses cited in the complaint and granting applications Exhs. 36 and 58 submitted by the respondents for discharging them from the proceedings. The said orders were also taken in revision before the learned Additional Sessions Judge who has also upheld the finding recorded by the learned Magistrate, which does not warrant any interference by this court while exercising the extra ordinary powers vested under Article 226/227 of the Constitution of India.

22. It is settled principle of law that concurrent finding of facts recorded by both the courts below cannot be assailed in a petition filed under Article 227 of the Constitution of India since the powers vested in Court under Article 227 of the Constitution of India is a supervisory jurisdiction. The High Court must confine itself to the correcting of error of jurisdiction committed by the courts below and it cannot assume suo motu jurisdiction of appellate court and correct every mistake assumed to have been committed by the courts below. It is a review of the decision making process and not the decision itself. The High Court cannot reappreciate preliminary or perceptive facts found by the fact finding authority under the statute. The aforesaid proposition of law is laid down by the Apex court in the case of (i) Mohd. Yunus v. Mohd. Mustaqim & others, AIR 1984 SC 38, (ii) Khanna Improvement Trust v. Land Acquisition Tribunal and others (1995) 2 SCC 557 and (iii) H.B. Gandhi v. M/s. Gopinath (1992) Supp. 2 SCC 312.

23. On the facts and in the circumstances of the case and having regard to the legal position stated above, I do not see any justifiable reason or valid ground to interfere with the order recorded by the learned trial Judge and confirmed by the learned Additional Sessions Judge in exercise of revisional jurisdiction. On the contrary, the said orders are required to be reaffirmed by this Court.

24. For the foregoing reasons, both the petitions fail having found meritless and the same are liable to be rejected at the admission stage and accordingly they are rejected. Notice issued in both the petitions is discharged.

(A.M. Kapadia, J.)

(karan)